

**Telecom Italia comments on the
draft BEREC Work Programme for 2012**

(4 November 2011)

1. Executive Summary

Telecom Italia welcomes the possibility to provide its contribution to the BEREC's Draft Work Programme for 2012.

Actually, we deem the discussion on the topics raised in the draft Work Programme to be of the utmost importance. As a matter of fact, the electronic communication sector is at the dawn of an era in which the technological and market changes require a rethinking of the regulatory approach to the whole sector in order to avoid a strategic drift. The need to foster the deployment of new generation fixed and mobile networks, the emerging role of new "over the top" subjects in the environment imply a reshaping of the digital ecosystem.

We therefore encourage BEREC to prioritise its work in 2012 by taking into account the increasing competitive pressure observed in the markets by new subject of the value chain and the need to preserve adequate incentives for network operators in investing in ultra-broadband infrastructures, also in the light of the goals of the "Digital Agenda for Europe" to achieve a high degree of high-speed broadband availability and take-up in the European Union.

Telecom Italia strongly believes that a best practice in the application of remedies to NGAN still does not exist at European level and completely different combinations of remedies in markets 4 and 5 are implemented in most of the member States.

Therefore, Next Generation Access Networks (NGAN) should be one of the core topic of BEREC's 2012 Work Programme. This challenging goals involves, among other things, the effective implementation of a more symmetric approach in regulating access to NGAN bottlenecks (e.g. entries to building and in-house wiring) and in differentiating access remedies on the basis of the heterogeneity of competitive conditions in different geographical areas.

In addition, BEREC's work on the issue of regulatory accounting and costing models to promote economically sound solutions in a dialogue with all stakeholders and with the European Commission, is increasingly important.

An EU-level approach to access product costing which would be disruptive for established and effective national practices, such us that envisaged by the Commission

in the ongoing public consultation on costing methodologies¹, would severely undermine regulatory certainty for investors in the transition from current to next generation broadband and result in further delays in the roll-out of high-speed access networks in Europe.

Equally important is BEREC's role in the definition and implementation of a consistent price test methodology for NGAN retail offers to provide guidelines to operators and certainty to the market.

Among the other core topics of the Work programme 2012, Telecom Italia would like to express its fully supports to the BEREC activities concerning international roaming and network neutrality.

Therefore, Telecom Italia considers of the utmost importance to extend to all the stakeholders, also by public consultation, the discussion on the expected BEREC deliverables concerning the implementation of the new roaming Regulation and net neutrality requirements.

2. Geographical approach to NGAN market analysis

The transition from copper to fibre networks, that is interesting well-circumscribed areas, highlights the importance of the geographic approach in the market analysis for NGAN and, as a consequence, the need for further work on the matter.

Current guidelines on the geographic aspects of market analysis offer a suitable tool with regard to the legacy copper markets. However, the emergence of NGAN does change the picture. For instance, it is necessary to take into account that new fibre networks could have a different topological structure in comparison with copper legacy ones and that the deployment of these networks is still at the very beginning.

Regulators should, therefore, address the geographical modulation of remedies through completely different methodologies. Telecom Italia deems that BEREC ought to provide further guidance on this fundamental issue providing NRAs with a harmonised set of tools. Not taking into account the competitive conditions within a geographically defined market would certainly affect the overall consistency of the

¹ "Questionnaire for the public consultation on costing methodologies for key wholesale access prices in electronic communications" published by the EC on 03/10/2011.

framework, hampering legal certainty and, most importantly, hindering the deployment of new generation networks.

Hence, also in the light of the NGAN Recommendation published in 2010, Telecom Italia deems that a full review of the 2008 ERG Common Position on Geographic Aspects of Market Analysis is needed.

3. NGAN symmetric access obligations

The roll-out of fibre access networks across various local areas by players other than those identified as SMP-operator are creating, in many instances, non-duplicable bottlenecks infrastructure, with particular reference to entries to buildings and in-house wiring.

Therefore, in the new scenario, a key challenge for NRAs is the application of symmetric obligations to prevent new NGA bottlenecks from emerging and ensure competition for end-users, avoiding the creation of “vertical access monopolies” in the buildings cabled by non-SMP operators.

Consistency of national approaches in this area is needed to avoid distortions in the internal market, but relevant differences are currently observed in different member States.

BEREC Work programme for 2012 should include activities aimed at providing guidance to NRAs on how best to implement the provisions of “Framework” (Art. 12) and “Access” (Art. 5) Directives for addressing bottlenecks in the access network in a proportionate and effective manner, irrespective of an SMP-position of the facility owner.

In this respect, an in-depth analysis of best practice in Europe concerning NGAN symmetric access obligations could be a very useful starting point.

4. Prize squeeze test for NGAN products

The NGA Recommendation requires the definition and application of a margin squeeze test for fibre products: *“NRAs should thus verify the SMP operator’s pricing behaviour by applying a properly specified margin-squeeze test over an appropriate timeframe. NRAs should specify in advance the methodology they will follow for identifying the imputation test, the parameters for the margin-squeeze test and the remedial mechanisms in case of established margin-squeeze”* (par. 26).

While for copper access the regulation on a margin squeeze test is already consolidated (in the countries where it is applied), NRAs are still investigating the approach to follow as to fibre access.

In this regard, TI thinks that price tests for fibre services should be further addressed and calls for a clear definition of such a methodology, including the implementation approach of the criteria illustrated in paragraphs 7 (long term access pricing) and 8 (volume discount) of Annex I to the NGAN Recommendation.

5. (Announced) BEREC analytic report on NGAN models

In the light of the above considerations on the current heterogeneity of NGAN regulatory models across Europe, Telecom Italia welcomes the inclusion in the BEREC Work Programme for 2012 of an analytic report on NGAN models.

We broadly share BEREC proposed selection of issues that should be dealt in more detail in the forthcoming report with two exceptions.

First, with reference to large business communication services, Telecom Italia believes that BEREC should not expend resources on this work item because fibre access for large business users is already a highly competitive market due, among others, to following main reasons: (a) many operators have connected by fibre large business users on individual request and not as a mass-market product; (b) FTTH for large business users results in higher deployment costs but in a lower investment risk since fibre is deployed only after it has been ordered.

Second, it is important to include in the report a thorough investigation of the access regulation scenario suitable to allow the implementation of the new “Vectoring” technology that is able to provide end users with a much higher bandwidth than VDSL2+ on FTTC architecture. This analysis is important to avoid the risk that a very remote (better, never-exploited) possibility to climb the ladder of investment at street cabinet level (through the copper sub loop unbundling) may hamper the benefits of the “Vectoring” technology for consumers and competition (on the basis of an enhanced bitstream offer).

6. Universal service provisions

The announced BEREC opinion on the expected Commission proposal on universal service is welcomed in order to better clarify the separation between the Universal

Service notion and the broadband promotion targets set by the Digital Agenda for Europe.

In fact, the goal of a harmonised promotion of broadband access services, included in the Digital Agenda, should be carefully separated from the goal of Universal Service obligations.

Universal service provisions are meant to constitute a ‘safety net’ to ensure that in a liberalised market citizens of the EU would not be excluded from the provision of a basic set of electronic communications services, thus avoiding social exclusion.

A redirection of the universal service regime to provide a tool for the achievement of the “broadband for all” target of the Digital Agenda would change the nature of this policy instrument from being a tool to avoid social exclusion to being an instrument for broadband network roll-out.

Such a dramatic policy change would have major negative effects on market development given the flaws of the current financing regime for universal service. Neither would it, at the current stage of broadband take-up in Europe, yield the expected result.

7. Transparency

With regards to the transparency of retail broadband access offers, Telecom Italia considers the Guidelines on Net Neutrality and Transparency, currently under consultation, sufficient to provide guidance for NRA to sustain self-regulation initiatives and promote the implementation of the new transparency requirements of the Universal Service Directive.

Therefore, no further BEREC action regarding common frames of reference is deemed to be necessary as suggested in the Work Programme.

8. Cost accounting for access products

The European Commission is expected to publish a Recommendation on cost methodology in 2012 and has recently submitted a Questionnaire for public consultation on this subject. The forthcoming Recommendation will guide the NRAs in setting the prices for the fibre and copper wholesale access products.

In this respect, Telecom Italia welcomes the continuation of the BEREC yearly report on regulatory accounting. The aim of such an expected revision should be to foster the

application of consistent accounting principles and methodologies at EU level, taking into account the experience gained at national level in the domain of cost accounting and accounting separation.

9. Implementation of Art. 13a and Art. 13b of the Access Directive

The European Commission has recently submitted a Questionnaire to the stakeholders on non-discrimination obligation and functional separation with the aim of giving guidance to NRAs and harmonise the application of these new remedies.

Telecom Italia welcomes the initiatives taken by BEREC on the separations models adopted this year and supports the announced follow-up to address the different models of vertical separation. In this regard, a BEREC common position/best practices assessment on the access network separation models and the related equivalence models would undoubtedly promote a harmonised interpretation and implementation of new Articles 13a and 13b of the Access Directive.